The Solicitors' Journal

VOL. LXXXV. **Saturday, January 4, 1941.** No. 1

Editorial, Publishing and Advertisement Offices: 29–31, Breams Buildings, London, E.C.4. Telephone: Holborn 1853.

SUBSCRIPTIONS: Orders may be sent to any newsagent in town or country, or, if preferred, direct to the above address.

Annual Subscription: £3, *post free*, payable yearly, half-yearly, or quarterly, in advance. *Single Copy:* 1s. 4d. *post free.*

CONTRIBUTIONS: Contributions are cordially invited, and must be accompanied by the name and address of the author (not necessarily for publication) and be addressed to The Editor at the above address.

ADVERTISEMENTS: Advertisements must be received not later than first post Thursday, and be addressed to The Manager at the above address.

Current Topics.

Members of Parliament: Detention.

THE Prime Minister was recently asked in the House of Commons whether he would consider the advisability of amending reg. 18B made under s. 1 (2) (*a*) of the Emergency Powers (Defence) Act, 1939, with a view to including the principles of an Act of 1715 which laid down that a Member of Parliament should not be detained until the consent of the House had been obtained. Mr. CHURCHILL said in reply that he hoped it would not be necessary again to exercise that power in the case of a Member of Parliament, but if in the course of the war—a war in which Parliamentary and all other liberties were at stake—it should be necessary for purposes of public safety to make an order for the detention of a member, he did not think it would be right that the Minister charged with that grave responsibility should be powerless to take action—however urgent the need might be—unless Parliament were sitting or were specially summoned, and until after there had been a Parliamentary debate and a disclosure of the information available to the Government, including information which might possibly relate to matters of a most secret character. In reply to a further question whether in view of his well-known support of all constitutional principles he did not think that the above-cited regulation could be amended to introduce safeguards of a general nature, the Prime Minister said: "I do not think the time has yet come when our dangers have receded sufficiently for us to be able to relax the special precautions which the House has thought necessary, and to withdraw the exceptional powers which Parliament has entrusted to the Executive under the constant supervision and control of Parliament. The time may come, but it has not come yet."

Detention: Legal Representation.

MR. MORRISON recently stated, in answer to a question in the House of Commons, that in no case had the Advisory Committee appointed to hear appeals from persons detained under reg. 18B of the Defence (General) Regulations, 1939, allowed a legal representative to appear to argue the case on behalf of the appellant; nor had the committee found it necessary to do so. In a few cases the committee had asked the legal representative, where such had been instructed, to appear before it to give evidence on behalf of the appellant when he was able to do so, or to assist the committee on the appellant's behalf in the investigation of the facts of the case. MR. MORRISON urged that in the majority of cases the appellants were quite unable to instruct legal representatives, and the cases where the committee had been asked to allow a legal representative to appear were few. In answer to further questions, he expressed the opinion that it would be most unfair to make any general reflections on the fairness of the committees concerned with detentions. He had dealt with a large number of their reports and was bound to say that they were acting very fairly, and that, if they had any bias at all, it was rather in favour of the applicants than otherwise. He added that 1,238 appeals had been heard, that in 315 cases the persons concerned had been released, and that, on or about 30th November, 341 persons were awaiting appearance before the Advisory Committee.

The Local Electors and Register of Electors Act, 1940.

DURING its passage through the House of Lords, the Local Electors and Register of Electors Bill was amended so as to protect the superannuation position of employees of local authorities who suffered loss of election fees in respect of local elections as well as that of employees who suffered because the register of electors and the jurors' book were not prepared. The DUKE OF DEVONSHIRE, who moved the amendment, explained that the Bill as introduced in the House of Commons provided only for meeting superannuation losses resulting from discontinuing work on the register and jurors' book, and that representations had been made that the superannuation losses which might result from the suspension of local elections should also be met. The number of employees involved was comparatively small, but there seemed to be no reason of principle why they should not be included. The amendment was also designed to extend the protection, both with regard to the loss from discontinuance of work on the register of electors and jurors' book and with regard to loss from the suspension of local elections, to contributors to superannuation funds maintained under local Acts, as well as funds maintained under the Local Government Act, 1937. A few authorities, notably the metropolitan boroughs, or some of them, maintained their local Act funds, and on this point again representations had been made. The necessary amendments were passed and subsequently agreed to by the House of Commons. The measure received the Royal Assent on 19th December.

Bombed Areas: Military Assistance.

MR. MORRISON recently dealt with the position in regard to military assistance to civilian authorities as regards problems arising out of recent bombing. The civil authorities, he said, were responsible for dealing with such problems. In cases recently when civilian services had been severely strained the military authorities had immediately responded to urgent requests for assistance made to them by the regional commissioners, and he expressed his appreciation—and he was sure, that of the civil authorities concerned—for the way in which the military commands had been ready to co-operate and for the generous and invaluable assistance they had given, particularly in restoring communications and services. Such assistance was, he added, to be called for only as a last resort, and it did not relieve the civil authorities of their primary responsibilities, but the fact that military assistance had been available in an emergency had contributed in a marked degree to the resumption of normal activities in the areas affected. He intimated that it was necessary to be a little careful, in justice to the military authorities, about the civil authorities not relying indefinitely upon military help, but subject to that all that was possible would be done.

Farm Tenancies: Subsidence.

AN interesting point was raised by a recent question in the House of Commons when the Minister of Agriculture and Fisheries was asked whether he would take steps to hinder any worsening of the conditions under which farmers held their farms in the case when there had been a change in the ownership of the land, particularly in those cases in a certain part of the country to which his attention had already been drawn. Mr. T. WILLIAMS, Parliamentary Secretary to the Ministry, stated in reply that the Minister was prepared to consider taking any necessary action in cases where the conditions governing the tenancy of ordinary agricultural land were calculated to interfere with the maximum production of food. The particular cases to which attention had been drawn were, however, exceptional, inasmuch as coal, which was essential to the life of the community, was being worked under the land and, owing to the risk of damage by subsidence, it was necessary to apply special conditions to the tenure of the land for agricultural purposes. Asked whether he was aware that that was worsening the condition of the farmers concerned and that the uncertainty of the present time was leading to a falling off in working the land, Mr. WILLIAMS said that he understood that the special conditions being applied were due to the fact that the farms were subject to immediate subsidence, and that, therefore, rents had been reduced, because the land would no longer be suitable for ploughing up, but there was no reason why the land should not be improved as grass land. The only two ways in which conditions had been altered were, first, that the rents had been reduced and, secondly, that in future no compensation would be payable should the crops be destroyed by subsidence.

Lighting Restrictions: Service Vehicles.

THE Home Secretary was recently asked in the House of Commons whether the military and other services were granted permission, or were otherwise authorised, to have more intense headlights than the masked headlights permitted to civilians, and whether he would permit the same arrangements to be made for doctors so as to reduce the difficulties when using their motor cars at night for emergency or urgent calls on patients. Mr. MORRISON, in reply, stated that vehicles used for the purpose of His Majesty's Forces were exempted from the regulations contained in the Lighting Order, and were permitted to use any lights required or authorised by the instructions of the Service Department concerned. Vehicles used for the purpose of other official services were subject to the regulations contained in the order, and the Home Secretary was unable to agree that cars used by doctors should be exempted from the regulations. He urged, however, that the recent concession enabling motorists to continue to use their masked headlights after an air-raid warning should be of considerable value to doctors.

Industrial Plant: Depreciation.

THE Chancellor of the Exchequer was recently asked in Parliament to consider the grant of an allowance to traders for the purpose of income tax and national defence contribution in respect of the exceptional depreciation of buildings, plant and machinery which were necessary to meet the demands upon their businesses under war conditions but which would no longer be required after the war. Sir KINGSLEY WOOD said that he had had the matter under careful consideration, and that he thought that, in view of the importance in connection with the arrangements for war-time expansion of businesses, the circumstances warranted an anticipation of his Budget statement. He had decided (he continued) to propose in his next year's Budget, as a war-time measure, an allowance for the purposes of income tax and national defence contribution which would, broadly speaking, be on the lines of that granted for the purposes of excess profits tax under para. 3 of Pt. I of the Seventh Schedule to the Finance (No. 2) Act, 1939, and would be available to all traders whether liable to excess profits tax or not. The allowance, which would be measured by the exceptional depreciation in so far as it was borne by the trader, would, like the existing excess profits tax allowance, be applicable to buildings, plant and machinery provided after 1st January, 1937, and would be given from the same date as that allowance. This extension to income tax and national defence contribution of the existing excess profits tax allowance would, he said, ensure that any loss which a trading concern might incur from erecting new factories that were necessary for the war effort, but might not be required at the end of the war, would be allowed for in the taxation of the profits of the business.

Income Tax Avoidance.

THE topic of income tax avoidance was recently raised in the House of Commons when a member asked the Chancellor of the Exchequer how many people earning large salaries were paying little or no income tax because, "by taking advantage of the law as it stood some years ago, they have made over their income to their children by means of legally drawn up trusts." The Chancellor of the Exchequer was also asked by the same member whether he would take steps to revoke such trusts. Captain CROOKSHANK, who replied, recalled that the question of the treatment for income tax purposes of settlements in favour of minor children was the subject of legislation in the Finance Act, 1936, and that the more general question of the treatment of all settlements was dealt with in the Finance Act, 1938. The Chancellor of the Exchequer was not in a position to furnish any statistics as to the operation of those recent changes in the law, but he was advised that they had proved generally to be effective in checking avoidance of tax by way of settlements of income. In reply to a further question whether any effective action had been taken to deal with those cases which took place some years ago, Captain CROOKSHANK said: "I would not like to take the matter any further than I have done already."

Government Accommodation: Contributions.

A CIRCULAR (No. 2234) has recently been sent from the Ministry of Health to local authorities with reference to the recovery of contributions from persons lodged under official arrangements. Information contained in an earlier circular (No. 1254) is supplemented, advice being given on various specific points which have been raised. It is unnecessary to deal exhaustively with the matter here, but some reference to the main points is desirable. The principle to be applied generally (it is stated) is that recovery should only be effected to the extent that a wage-earner rehoused with his family, if any, is able to pay for the new accommodation with no greater difficulty than for the accommodation previously occupied. Where a family, including the wage-earner, is living together as a unit, or a wage-earner who normally lives by himself, is in accommodation provided at Government expense and the wage-earner is in employment or there is sufficient unearned income, it will be necessary to consider the relative financial positions before and after removal. If liabilities in respect of the original house have ceased or diminished, and equivalent additional expenditure (including additional travelling expenses to and from work) has not been incurred, a contribution towards the cost of providing the new accommodation would properly be payable. As some persons may be willing to pay the full cost of the new accommodation local authorities might consider it preferable to ask whether such payments can be afforded before making further inquiries. When the full cost can be paid by billeted persons, every endeavour should be made to bring about a private arrangement, so that the billeting notice may be withdrawn. It is not proposed—where recovery is proper and the persons concerned have been accommodated for more than two weeks—that attempts should be made to recover in respect of the period before the wage-earner was made aware of his obligations, though offers to pay retrospectively should be accepted. Where a wage-earner is serving in the Forces, he should be deemed to be residing with his family in the new accommodation for purposes of the general principle above stated. Only actual current expenditure in respect of the vacated houses should be taken into account in the case of families who have been evacuated from certain coastal towns. Where the wage-earner rehoused is the owner of the house vacated (whether subject to an outstanding mortgage or not) his outgoings on the property should, it is stated, be calculated on the assumption of a continued loss equal to the gross Sched. A assessment in addition to the rates, ground rent, house insurance and income tax, if any, actually payable. In case of temporary accommodation—such as required by those whose houses are in danger from unexploded bombs or who are awaiting the completion of first-aid repairs—no approach need be made to recover contributions, although the accommodation is to be occupied for more than two weeks. Approved expenditure for additional staff will be made by the Exchequer.

Recent Decision.

IN *Ex parte Sabini* (*The Times*, 21st December) a Divisional Court (HUMPHREYS and ATKINSON, JJ.) granted an application for a writ of *habeas corpus* by one who had been detained by an order of the Home Secretary under reg. 18B of the Defence (General) Regulations, 1939. The court intimated that the main point was that the applicant might well have been confused with someone bearing a similar name.

War Risks: Constructive Total Loss.

THE Court of Appeal, in the considered judgments of Scott and MacKinnon, L.JJ. (reversing the considered judgment of Hilbery, J.), have recently examined the effect, in a policy of marine insurance, of a "frustration clause," where, upon the outbreak of war, the German ship deviated from the contractual route and was scuttled by orders of the German Government. Were the cargo-owners entitled to claim under the policies for a constructive total loss of their cargoes? In two cases, the ships were scuttled; in the third case, the ship with her cargo reached Hamburg.

Hilbery, J., held there was a frustration of the insured *voyage*; the policy was warranted free of any claim based upon such frustration. The Court of Appeal decided that when the master determined to obey the orders of his government, or left the neutral port for Germany, there was a constructive total loss of the *goods*; the claim was not based on the loss of the voyage: the owners were entitled to recover (*Forestal Land, Timber & Railways Co., Ltd.* v. *Rickards: Middows, Ltd.* v. *Robertson: W. W. Howard, Brothers & Co., Ltd.* v. *Kann* (1940), 84 SOL. J. 669); 57 T.L.R. 139 (C.A.)).

These were three test cases on voyage policies, by British cargo-owners against representative Lloyd's underwriters for the loss of cargo shipped before the outbreak of war upon German ships. After 16th August, 1939, the German Government, taking control of German-owned merchant shipping, had ordered vessels and their masters to take refuge in neutral ports, and, if possible, to return to Germany with their cargoes, or, as a last resort, to scuttle their vessels. The insured perils—war and marine—included "Men of war, enemies, . . . arrests, restraints and detainments of all kings, princes and peoples . . ." The first of the Institute War Clauses was also included, covering loss or damage to the insured property caused by "hostilities" and "warlike operations." The policy contained the "*frustration clause*": "Warranted free of all claims based upon loss of, or frustration of, the insured voyage or adventure caused by arrests, restraints or detainments of kings, princes, peoples, usurpers or persons attempting to usurp power." (This clause was introduced into Lloyd's voyage policy to exempt underwriters from their liability under *Sanday's Case* [1916] 1 A.C. 650, where it was held that though goods had been delivered intact to the assured, there had been a loss of the adventure and that the assured, upon giving notice of abandonment, was entitled to recover for a constructive total loss.) These three cases were selected by agreement; pleadings were settled by opposing counsel in consultation; material facts were agreed. No notice of abandonment was given, but the underwriters agreed to waive the absence of notice.

In the *Forestal Land Case*, wood extract was to be transported *from Buenos Aires for Hong Kong* (Shanghai Option), trans-shipment at Durban, in the s.s. "Minden," a German-owned vessel. On 16th August, 1939, the "Minden" sailed; normally she would have arrived at Durban about 15th September. On 24th August (deviating from the east to north-west) she arrived at Santos in Brazil; the next day she reached *Rio*, where she stayed until 6th September. She then sailed to return to Germany. On 29th September, on interception by a British cruiser off the *Faroe Islands* in North Atlantic, the master *scuttled* her. From 3rd September, there was an effective blockade of German ports by the British and the French fleets who were taking steps to capture or destroy German merchant vessels on the high seas. In the *Middows Case*, triplex boards were to be transported *from Bremen to Cape Town, in the s.s. Wangoni*, a German-owned vessel. On 12th August, 1939, the "Wangoni" sailed; she would normally have reached Cape Town—her first port of call— about 12th September. On 29th August, arriving at Las Palmas, she sailed for *Vigo* in Spain, arriving there on 1st September. There, *until 10th February*, 1940, *she remained*. On 5th March, she arrived at *Hamburg*.

In the *Howard Case*, Jarrah boards were to be transported *from Bunbury in Australia, to London, via Cape of Good Hope, in s.s. "Halle,"* a German-owned vessel. On 27th July, 1939, the "Halle" sailed, passing the Cape of Good Hope on 18th August: normally she would have arrived at London about 16th September. On 6th September she arrived at *Bissao* in Portuguese Guinea; on 13th October she left. On 16th October, in the presence of a French warship, she was *scuttled*.

In each case, said Scott, L.J., the master of the ship acted in strict obedience to the orders of his government. The deviation from the direct route was to take ship and cargo into a port of refuge. The scuttling, and, in the *Middows Case*, the bringing of the "*Wangoni*" to Hamburg, were acts of the German Government. When the ship left its neutral port, that government "converted" the goods, so to speak, to its own use. The *goods* themselves were thereupon lost: if they were proximately lost by an insured peril, the assured could recover.

It was argued that the claims were "based upon loss of the insured voyage," and were barred by the frustration clause. But if there was a constructive total loss of the goods, a concurrent loss of voyage would not bar the right to recover. The claims in the present cases were for the loss of the goods. When the ship sailed from its port of refuge for Germany, that was a constructive total loss within s. 60 of the Marine Insurance Act, 1906—a deprivation of the possession of goods without likelihood of recovery. It is not the law that a constructive total loss of the goods can happen only where there is a loss of the venture.

The policies were in force when the ships left their neutral port of refuge. In the *Minden* policy, the ship had liberty to call at any ports, in any rotation, and for any purpose; deviation to Rio was authorised. In the *Wangoni* bill of lading, an attached clause provided that upon certain events or apprehended events, i.e., war or government control of trade with any country to or from which the ship normally sailed, the shipowner was entitled to alter the journey, to vary or delay the voyage, or to detain the ship. To the *Halle* bill of lading a war clause attached provided that, in addition to other liberties, the carrier might, upon the imminence of war, or in consequence of government measures —the clause was uncompleted. The deviation to Bissao was covered.

MacKinnon, L.J., observed that the law of marine insurance is "nothing more than a collection of rules for the construction of the ancient form of policy and such additions as are from time to time annexed to it" (at p. 143 of 57 T.L.R.). This "ancient form" had been well characterised as "clumsy, imperfect and obscure." Many of the later clauses follow this "tradition of obscurity." The facts in the present cases being agreed, the sole question was the true construction of the contract. "If the goods were still covered by the policy, there was a constructive total loss when the German captain at Rio determined to obey the instructions of his government, hold the goods as the subject and servant of that government (thereby ceasing to hold them as the bailee of the assured), carry them if he could to a German port, or sink them by scuttling his ship if intercepted by a British or allied vessel."

No claim was based upon loss of the insured voyage. The "frustration clause" means "Free of any claim which is in fact based, and can only be based, upon loss of the insured voyage." It is an error, said MacKinnon, L.J., to imagine that to establish a claim on a policy on goods, the assured must also allege a loss of the voyage; if that were the case, the assured would have no claim for goods which arrived damaged, as long as they had reached their insured destination. The subject-matter of the contract is the *goods*—insured against loss or damage by insured perils; *the loss of the voyage is an additional insurance*. It is not the law, as Hilbery, J., thought, that "the subject-matter of the insurance is the adventure of the goods upon the voyage." If the latter view were correct, "the assured under the policy must have accepted the most fatuous and worthless contract ever made by a sane man." The policy insures the goods against loss by war perils; upon that interpretation the frustration clause would render the promise "absolutely nugatory."

The deviation of the "Minden" to Santos was permitted under s. 49 (1) (*a*) of the Act; it was excused, moreover—s. 49 (1) (*b*)—being "caused by circumstances beyond the control of the master," i.e., by orders of his government. For the change of the voyage no extra premium was due; the change was *not voluntary*, within s. 45, but was made under compulsion.

In the "Wangoni" case, the cost of recovering the goods (insured value £24) would certainly have exceeded their value when recovered, within s. 60 (2) (i) of the Act. The owners were therefore entitled to claim a constructive total loss.

Of the cargo on the "Halle," when the master sailed from Bissao there was a constructive total loss.

In each of the three cases, accordingly, the cargo owners were entitled to recover as upon a constructive total loss of the *goods*.

A Conveyancer's Diary.

The War Damage Bill.—III.

PART II of the Bill deals with the two schemes for chattels. One is for the compulsory insurance of chattels used for the purposes of business; the other is for the voluntary insurance of private chattels. Both schemes are to be run by the Board of Trade. Part II is open to one very serious general criticism. In broadcasting upon the Bill in general the Chancellor of the Exchequer ascribed its length and intricacy to the complexity of our "system of tenure," i.e., to the difficulty of legislating about land. Our complex realty system is habitually contrasted with our law of personalty much to the advantage of the latter; such a refrain runs, for instance, through all discussions of the 1925 legislation. This fact has in no way daunted the framers of the Bill, who have dealt fully with the realty question and done so in the Bill itself. But personalty seems to have been too much for them, in spite of its alleged simplicity. They have given the Board of Trade power to operate two schemes and have lightly sketched their main outlines; but they have provided in s. 42 (2) that the "nature and extent of the indemnity" to be provided and the conditions of such indemnity are to be determined by policies issued in a form which is to be "prescribed." The last word recurs throughout Pt. II and is defined by s. 53 (1) as meaning prescribed by order of the Board of Trade. Even the rate of premium is to be prescribed (s. 42 (2)), although in the case of the compulsory scheme it seems objectionable on constitutional grounds that a Government Department should have power to determine the rate of a tax, for that is what a compulsory premium is. As most details have yet to be prescribed we are compelled to take both the schemes for chattels largely on trust; such a state of affairs is not satisfactory as it is much more difficult to make a serious study and criticism of Statutory Rules and Orders, which simply appear when they are already made, than of bills which take their full course through Parliament. Where the subject-matter is as important and complex as it is in the present case, ample opportunity ought to be given for informed discussion and understanding.

So far as the Bill goes, certain features are common to both schemes. For example, in normal cases, payments are only to be made as and when the Treasury may direct, either generally or in relation to particular classes of case (s. 43 (1)). But the Board of Trade has powers to make advances without the direction of the Treasury in various circumstances. Thus, under s. 44 (2) (*a*) they may do so where they are satisfied that "the replacement or repair of the goods destroyed or damaged is expedient in the national interest"; or, again, in the case of the private chattels scheme, if the payment or any part thereof is expedient to prevent "*undue* hardship," a rather more stringent condition than it seems in the text of the Bill without our italics. They may also make earlier payments under s. 44 (2) (*b*) if the total amount of all claims outstanding under a given policy does not exceed an amount which is to be "prescribed"; the effect of this provision will be clearer when the figure *is* "prescribed"; the explanatory memorandum gives no suggestion what it is to be. In any case it seems very odd that the worse the policy-holder has suffered the worse is to be his chance of coming within this clause. Conversely, nothing is to be paid at all on claims under £5 (s. 42 (4)), a reasonable provision to prevent the machine being clogged by cases *de minimis*.

No assignment of a right to payment is to be valid, whether it be absolute or by way of charge, unless and until it is approved in writing by the Board of Trade (s. 42 (5)). We have already discussed the corresponding provision (s. 10 (7)) of the realty scheme. But there is a difference; while claims under the realty scheme are expressly made *transmissible* by approved assignment or operation of law (and, therefore, by implication *transmissible* in no other way, so that a will cannot touch them), the Bill assumes that claims under the chattels schemes are transmissible, but restricts *assignments*. Therefore, since a will is not an assignment they, apparently, are transmissible by will (or, for that matter, by operation of law). This difference is not so much a distinction as an anomaly, and ought to be changed. There is nothing in the personalty schemes to substitute claims for the chattels themselves, so that a bequest of chattels which are later destroyed is adeemed. It will therefore continue to be necessary, as was pointed out in this column before the Bill appeared, for almost everyone to make codicils at once to guard against such a preposterous consequence. And, having regard to the fact that a widow or widower takes personal chattels upon intestacy, it would seem right that the Administration of Estates Act should be amended so as to provide that if they or any of them are destroyed or damaged the claim on that account should go to the widow or widower. As matters stand it would fall into residue.

Under the "business" scheme "any person carrying on business in the United Kingdom" must insure any goods he *owns* in the course of that business, whether in his possession or not, and any goods which are *in his possession* in the course of it, whether he owns them or not, and any goods on which he has a mortgage in the course of such business (s. 43 (1)). "Business," is, of course, a wide word, which has frequently been discussed in taxation cases and those relating to restrictive covenants. It includes all trades: the *locus classicus* for this proposition is the judgment of Denman, C.J., in *Doe d. Wetherell* v. *Bird*, 2 A. & E. 161, in which he said: "Every trade is a business, but every business is not a trade; to answer that description it must be conducted by buying and selling, which the business of keeping a lunatic asylum is not" (p. 166). It also includes all professions (see *per* Rowlatt, J., in *Barker & Sons* v. *C.I.R.* [1919] 2 K.B. 222, 228), which have had to be expressly exempted from such taxes upon business as the E.P.D. and the N.D.C. The Board of Trade can exempt any prescribed classes of persons or goods from the compulsory scheme (s. 45 (1)), and they may then insure or be insured under the private chattels scheme. The memorandum does not suggest what, if any, classes it is proposed to exempt. Section 45 also contains some very complicated special provisions about farming stock, which those who are interested will be well advised to study in the text. Goods already insurable under the existing Commodities Scheme are also exempted by s. 43 (3), as are also certain classes of maritime and nautical chattels which are looked after by the Ministry of Shipping.

The private chattels scheme is voluntary and covers all goods situated in the United Kingdom which are not insurable under the business scheme, and are either owned or in the possession of the person who insures or are owned by, or in the possession of, a member of his household ordinarily resident with him or a domestic servant of his. The fact that the scheme is voluntary will tend to reduce the available pool, since a good many persons in "safe areas" will not insure. And, as cover is to be limited to £2,000 under s. 47 (£1,500 for ordinary chattels, plus £500 for a motor car or a motor cycle), the pool will be still further reduced by cutting out the *ad valorem* premiums of persons who have very valuable things. In any event, it seems rather unjust that anyone should be outside the scope of compensation altogether at a time when we are said all to be "standing together." What is worst of all is that by s. 49 the Board of Trade has an abolute power to refuse any proposal it thinks fit under the private chattels scheme. The consequence of all these exclusions is that the provision under this scheme is to be 30s. per cent. per annum, i.e., more than twice as much as under the business scheme. Unless very good reasons are adduced it would seem better to make a firm decision on this matter of private chattels that insurance shall be universal and compulsory. No such reasons have yet been adduced: I have, since drafting this article, read the whole of the report of the debate in "Hansard." The private members unanimously demanded a compulsory scheme, mostly with considerable cogency, while the speeches of Ministers in support of the voluntary principle were singularly lame and unconvincing.

No damage to chattels that has occurred up to date is covered, under the Bill, by either scheme. Under s. 50 the Board of Trade is given a power to make payments as if the chattels so destroyed had been insured. The memorandum states that the intention is to use this power to make the full payments that would have been due under the scheme, less the appropriate premium. But the Board of Trade is under no *obligation* to pay anything at all, and the Act ought to contain a mandatory provision on the point. Section 50 is also said in the memorandum to be intended to cover the continuance of the "scheme whereby compensation is at present paid to persons with incomes of £400 if married and £250 if single for the loss of essential furniture and clothing." It is a pity that the all-too-scanty *ex gratia* grants made to tide persons over immediate necessities should be thus confused with questions of insurance and compensation.

Under s. 64 Defence Regulations may be made to amend the chattels schemes, though not the realty scheme. It is unfortunately necessary to protest once more against this further extension of the tendency to invite Parliament to delegate its functions to Whitehall, the more so that s. 64 (2) expressly says that such regulations are not to be invalid if they extend the scope of compulsory insurance, i.e., if they impose new taxation without Parliamentary sanction. This criticism is, of course, based on the fundamental principles fought for and won in the Stuart period, and is without

prejudice to our suggestion that the private chattels scheme ought to be made compulsory by this Bill.

In these articles the Bill has been considered and criticised from the lawyer's professional point of view, which must necessarily throw its defects into the strongest relief. The whole subject is of great complexity, and it is no slur on the draftsman of such a measure to call attention to ways in which so large a work could be improved. The constitutional objections are, of course, in a different category from the purely technical ones, since the points which give rise to them are merely examples of an increasing and deplorable tendency. With these blemishes removed the Bill will still not be really complete, as so much of its detail is left to be "prescribed." And when everything that has to be "prescribed" has been so, a vast load of responsibility for human happiness or suffering will be left upon the shoulders of the Departments. It is a very heavy load, since sympathetic administration can make the Act a great measure of social justice, while a narrow or inconsiderate attitude will make it into a source of irritation or worse. The Bill comes late upon the scene, and many have suffered and are suffering for its belatedness. Once it is passed, not only sympathy, but speed in administration will be imperative if it is to cure the evils that already exist. At present there is not speed but delay; in one case, for example, it took a district valuer two months even to send a formal acknowledgment of a form V.O.W.1. The Bill is a great opportunity for good; it should not and must not be allowed to waste itself away in endless formalities and slow processes.

Landlord and Tenant Notebook.

Controlled Premises Sub-Let Furnished.

A QUESTION in Parliament recorded in "Current Topics" in our issue of 14th December last (Vol. 84, p. 686), shows that there is still a certain amount of misconception among landlords and others, about the very nature of the Rent, etc., Restrictions Acts. Citing the case of a notice to quit served on the wife of a soldier "because" she had let rooms to an officer and his wife, the questioner asked the Minister of Health whether he was aware that property owners could still give tenants notice to quit "for" sub-letting furnished rooms "on the ground that" such was contrary to the tenancy agreement.

A landlord of premises within the Acts need not state reasons when giving notice to quit. The effect of a notice to quit is to convert the contractual tenancy into a statutory tenancy; indeed, the case of a fixed term expiring and the tenant retaining possession by virtue of the Acts no notice is necessary, as was made plain by *Cruise* v. *Terrell* [1922] 1 K.B. 664 (C.A.), and earlier authorities therein cited. The scheme of the legislation was succinctly described by Bankes, L.J., in *Barton* v. *Fincham* [1921] 2 K.B. 291 (C.A.), when, after summarising the objects, including restriction on the right to possession, his lordship said: "The means adopted . . . for securing these various restrictions are very different. . . . In the case of the restriction on the right to possession s. 5 of the 1920 Act [see now the 1933 Act, s. 3 and Sched. I] provides as follows: 'No order or judgment for the recovery of possession of any dwelling-house to which this Act applies [now the principal Acts apply] shall be made or given unless . . . Then follows in a series of sub-sections [now] the provisions of Sched. I] a list of instances in which an order or judgment may be made or given. It appears to me that the Legislature . . . has secured its object by *placing the fetter, not upon the landlord's action, but upon the action of the Court.* . . . The Legislature has definitely declared that the Court shall exercise its jurisdiction only in the instances specified . . . and in no others."

And it was pointed out that there was no need for a tenant to plead the Act, but there is, to cite Bankes, L.J., again, this time in *Salter* v. *Lask* [1924] 1 K.B. 754 (C.A.), a duty on the judge "to inquire whether the premises are within the Act." This point, whether the premises are within the legislation at all, has since been the subject-matter of legislation; s. 7 (1) of the 1938 Act placed the onus of proof on the landlord, so that tenants are now presumed to be protected and the landlord, if unable to rebut the presumption, has to satisfy the court that the necessary conditions in which it may exercise jurisdiction in possession obtain.

In his reply to the question, the Minister of Health referred to the universal condition that the court must consider it reasonable to make an order for possession, besides being satisfied that at least one of the other conditions was fulfilled. This point was discussed in a recent "Notebook," that of 7th December last (Vol. 84, p. 678), and, in view of such *dicta* as that of Swift, J., in *Williams on* v. *Plaint* [1924] 2 K.B. 173, cited therein—"I can hardly conceive any circumstance which affects the relationship of the tenant to the premises which is not a proper circumstance for him [the county court judge] to consider" one can say that the Minister of Health was on pretty solid ground when answering as he did.

So far, while using the incident as an occasion for reviewing the position of claims for possession, I may be said to have somewhat captiously criticised a member of the House of Commons who was, after all, merely engaged in airing a grievance; for it is obvious that if a landlord does not specify grounds when giving notice to quit he will have to disclose them before the notice can be effective for the purposes contemplated. But the questioner, and possibly the landlords whom he mentioned, ignore, as did the answer, what is a far greater if different danger to a protected tenant who sub-lets part of the premises furnished. (If he sub-lets the whole, furnished or unfurnished, he loses all protection: see the "Notebook" of 14th December last, Vol. 84, p. 690.) This is that the landlord, instead of relying on a possible breach of condition of the tenancy (and a great many protected tenancies do not contain prohibitions on alienation), may claim possession of the part sub-let which is outside the scope of the Acts. The result in many cases would be possession of the whole, the premises having lost much of their attraction to the tenant. On the other hand, it is right to point out that in practice landlords may often find it difficult to prove their allegations: the mere presence of a third party on the premises is consistent with his being a lodger.

I think the inherent possibilities were first visualised by the plaintiff in *Phillips* v. *Hallahan* [1925] 1 K.B. 756 (C.A.), who owned premises consisting of a shop and dwelling-house, usually let as a whole, which he let separately, but both to the defendant, in 1923. He successfully claimed the shop, after giving notice to quit. The principle was applied to a case in which the protected tenant had effected the division in *Gidden* v. *Mills* [1925] 2 K.B. 713, the premises, originally a coach-house and stable with living accommodation above, having been converted by the defendant tenant into a garage and living rooms: he sub-let the rooms, and the landlord, on the expiration of the head lease, was held to be entitled to possession of the garage. In *Leslie & Co.* v. *Cumming* [1926] 2 K.B. 417, the landlord would have succeeded in recovering part of premises sub-let furnished if he had not claimed the whole. In *Gee* v. *Hazelton* [1932] 1 K.B. 179 (C.A.), the landlord recovered possession of part of a garden used by licensees as a bill-posting station. But the principle was established beyond all question when the House of Lords dealt with *Barrell* v. *Fordree* [1932] A.C. 676.

In that case the defendant had sub-let three rooms of her premises furnished to one party, two others to another, retaining one room and a scullery for herself. The landlord claimed the sub-let portions. He had, as Lord Warrington pointed out, a common law right to recover possession of the entire house; the Acts prevented him from obtaining a judgment giving effect to that right in respect *only of a dwelling-house to which the Act of* 1920 *applied*; and s. 12 (8) of that statute said: "Any rooms in a dwelling-house subject to a separate letting, wholly or partly as a dwelling, shall for the purposes of this Act be treated as part of a dwelling-house let as a separate dwelling," *prima facie* protected by s. 12 (2) but excluded by proviso (i): "this Act shall not . . . apply to a dwelling-house *bona fide* let at a rent which includes payment in respect of board, attendance, or use of furniture."

Books Received.

Income Tax for H.M. Forces. By Capt. G. B. BURR. 1940. pp. (with Index) 55. London: Taxation Publishing Co., Ltd. Price 1s. net.

Loose-leaf War Legislation. Edited by JOHN BURKE, Barrister-at-Law. 1940–41. Part 3. London: Hamish Hamilton (Law Books), Ltd.

The Juridical Review. Vol. LII. No. 4. December, 1940. Edinburgh: W. Green & Son, Ltd. Price 5s. net.

The Solicitors' Handbook of War Legislation. Third Supplement. By S. M. KRUSIN, B.A., and P. H. THOROLD ROGERS, B.A., B.C.L., Barristers-at-Law. 1940. pp. xix and (with Index) 320. London: The Solicitors' Law Stationery Society, Ltd.; Stevens & Sons, Ltd.; Sweet & Maxwell, Ltd. Price 15s. net.

A Treatise on the Law of Prize. By C. JOHN COLOMBOS, LL.D., of the Middle Temple, Barrister-at-Law. Second Edition, 1940. Demy 8vo. pp. xiii and (with Index) 387. London: The Grotius Society. Price 21s. net.

Our County Court Letter.

Hedge as a Nuisance.

In a recent case at Redditch County Court (*Devey* v. *Balmforth*) the claim was for 10s. as damages in respect of the malicious cutting down of the plaintiff's boundary hedge, and throwing the cuttings on to his flowers, also for an injunction to restrain further acts of damage. The defence was that the hedge overhung the defendant's property and constituted a nuisance, and the cutting was in exercise of the right of abatement. The counter-claim was for damages for trespass and nuisance, caused by the roots of the hedge and its overhanging branches, which prevented the proper use of the defendant's land. The plaintiff's case was that his privet hedge had been planted in 1925, well within his own boundary. It had grown in course of years, and permission had been asked to cut it from the defendant's garden, but access had been refused. The defendant had also drawn the hedge across his own land by tying the branches to a tree. The plaintiff had used his best endeavours to limit the growth of the branches. With regard to the roots, the defendant's remedy was to chop them off with a spade, once a year. The defendant's case was that he had protested about the hedge being planted too close to the boundary. The plaintiff should have left enough room to cut the hedge from his own land. The subsequent growth of the hedge had prevented the defendant's friends from bringing their cars into his front garden, and vegetables could not be grown within four feet of the hedge, owing to its height and the spread of its roots. The damage to garden crops was assessed by a surveyor at £1 per year. By consent, His Honour Judge Kennedy, K.C., gave judgment as follows: Plaintiff to keep the height of the hedge at not more than 5 feet 6 inches and properly trimmed, and to cut back the roots on defendant's side, on being given reasonable access. The defendant undertook not to repeat any of the acts complained of and to pay £3, viz., three-quarters of the costs, the remaining quarter (£1) being paid by the plaintiff. The defendant also agreed to pay £2 12s. 6d. in respect of solicitors' costs, the counter-claim being withdrawn.

The Quality of Safety Razors.

In *Ockleshaw-Johnson* v. *Brownlow and Others*, recently heard at Stratford-on-Avon County Court, the claim was for £2 10s. being an amount paid on a consideration which had failed. The plaintiff's case was that he had bought an electric dry shaver, viz., the "Victory," under a guarantee against defective workmanship. The wrapper contained the statement: "Shave in a minute. Just press the button." Nevertheless the plaintiff could make no contact with his beard, in whatever manner he held the razor. The case for the defendants was that the plaintiff admitted there was no defect in the razor, but the plaintiff was unable to use it owing to a life's habit of shaving by another method. The evidence of the manufacturers was that the plaintiff had hitherto not held the razor correctly. Provided no aspersion were cast upon the razor the manufacturers were prepared to take it back, without prejudice, and to return the money. His Honour Judge Kennedy, K.C., observed that the allegations as to the unfitness of the razor were unfounded. By reason of the plaintiff's age and physical strength, however, the razor was unsuitable for him. The defendants had nevertheless met the plaintiff in a proper manner. By consent, judgment was given for the plaintiff without costs.

Decision under the Workmen's Compensation Acts.

Dependency of Widow.

In *Mills* v. *Hamstead Colliery* (1930), *Ltd.*, at Walsall County Court, the applicant's case was that her husband had been killed in an accident in March. His average weekly wage was £3 17s., and the total earnings for the three years preceding the accident was £624. The marriage took place in 1924, but the deceased fell on short time in 1935, and the applicant herself then went out to work. Her recent earnings were £1 a week, but she had lost time through neurasthenia. Owing to her husband's death, the applicant had lost £3 17s. a week, plus a coal allowance of 5s. If she had been totally dependent on the deceased, the applicant would have been entitled to £342 for herself and her twelve-years old daughter. It was virtually only a technicality that the applicant was not totally dependent. The respondents' case was that the applicant had made a substantial contribution to the family fund, and was not as badly off as if the deceased had contributed the whole of the household income. The amount awarded must be "reasonable and proportionate to the injury," and the respondents had offered to submit to an award of £275 for the applicant and her daughter. This was about 75 per cent. of the maximum award for total dependency in the circumstances. His Honour Judge Caporn made an award of £325 with costs.

Practice Notes.

Disclaimer: Transfer of Action.

LANDLORD AND TENANT (WAR DAMAGE) ACT, 1939.

In *Clavering* v. *Conduit Mead Company, Ltd.* (1940), 57 T.L.R. 146 (p. 9 of this issue), Morton, J., ordered the transfer to the Chancery Division of an originating application begun in the Westminster County Court, for leave to disclaim a ground lease for ninety-nine years, at a rent of £5,125, of premises destroyed by enemy action.

Three of four sub-tenants had disclaimed their sub-leases. C desired to disclaim his lease, being a building agreement, and a ground lease within the Landlord and Tenant (War Damage) Act, 1939. The leave of the court was necessary; normally the county court. It was sought to transfer the application on the ground *inter alia*, that difficult and important questions of law would arise and that a number of experts would be called. The company supported the application.

A tenant may serve on the landlord a "notice of disclaimer," when the land in a lease is unfit through war damage (s. 4 (1)). In the case of a ground lease (defined in s. 24), certain modifications apply (s. 13 (1)). For a notice of disclaimer in that case, the leave of the court is necessary, s. 13 (2). Leave will be granted, on terms, if the court thinks that disclaimer is equitable (s. 13 (3)). The jurisdiction of the court will be exercised by the county court, subject to s. 111 of the County Courts Act, 1934 (s. 23 (1)). By s. 111 proceedings in the county court may be removed into the High Court by *certiorari* "or otherwise," if the High Court thinks that this course is "desirable."

Morton, J., observed that the amount of the claim may be very large, the rent being very substantial. Expert evidence might also be required. But what, more than anything, induced the learned judge to make the order was the fact that there was an absence of judicial decision upon a recent and important statute, upon the construction of which difficult questions of law might arise. He followed the observations of Lord Esher, M.R., in *Banks* v. *Hollingsworth* [1893] 1 Q.B. 442, 447, 448—a case relating to the removal of a case from the Mayor's Court into the High Court under the Borough and Local Courts of Record Act, 1872, Sched., cl. 12. In deciding whether an action ought to be transferred from the county court to the High Court, said the Master of the Rolls, the judge must consider all the circumstances, the interests of the parties and of "public justice." What is the amount of the claim? Even if it be very small, does the case involve "questions of a complex or highly difficult nature requiring the knowledge and experience of the judges of the superior court for their determination?" In which court will justice, in the particular case, be more speedily obtained? In the High Court an action may take some time to be reached; in the county court, there may be more speed. A judge is not bound, upon any of these points, to take either the one course or the other; he must say, however,

> "after a reasonable, judicial, and careful consideration of the circumstances, whether an action ought rather to be tried in the High Court or in the court in which it was brought."

His decision is "a matter of discretion."

Costs of Unnecessary Transcript.

In allowing an appeal by the defendants in *Lyus* v. *Stepney Borough Council* (1940), 5 T.L.R. 150, 155, the Court of Appeal gave a special direction to the Taxing Master that in taxing the costs of the appeal, he should disallow costs of the transcription of certain unnecessary evidence and correspondence.

The question at issue in the appeal was one of liability. At the hearing, evidence was mainly directed to the question whether the plaintiff's illness—he had collided in the darkness with a sandbin, no warning of which was given—and to the *quantum* of damage. In the appeal these questions were not in issue. All the evidence was transcribed and copied in triplicate as also was the whole of the correspondence between the solicitors. "It seems plain," said Luxmoore, L.J., "that most of such transcription and copying was entirely useless."

To-day and Yesterday.

Legal Calendar.

30 December.—On the 30th December, 1734, four men were hanged at Tyburn. John Butler had been condemned in October for breaking into a house in Red Lion Street and stealing goods to a great value. The other three were from the December batch at the Old Bailey: Aaron Pritchard for breaking open the till of a shopkeeper in Ludgate Street and stealing £6 and a diamond ring, Ambrose Thurman for stealing a silver tankard from the "Bull's Head" in Leadenhall Street, and James Casey for highway robbery.

31 December.—On the 31st December, 1757, "two desperate fellows, brothers, were brought prisoners from Guildford, under a strong guard, to the New Gaol in Southwark for breaking and entering in the night-time the dwelling-house of Robert Vincent of Crawley and stealing £4 18s. in silver. They used Mr. Vincent very ill, presented a pistol to him and threatened to burn him alive if he did not discover where his money was hid. They were apprehended on the information of their accomplice who lived at Godalming, who is admitted evidence against them and has discovered several other robberies."

1 January.—Gerald Fitzgibbon was born at Glin in County Limerick on the 1st January, 1793.

2 January.—On the 2nd January, 1823, Robert Hartley, a convict, was executed at Penenden Heath, near Maidstone, for stabbing Captain Owen of the "Bellerophon" convict ship lying off Sheerness. Some days before, he had boasted of two hundred burglaries and robberies committed by him since he was ten years old and declared that if he were freed that night he would do something before morning to get in again. In the end, however, he displayed deep repentance, listened respectfully to the chaplain at the gallows and in a short speech warned others to alter their wicked course of life. He asked the executioner not to be long about his business, gave him directions as to the placing of the rope, and exclaimed in a loud voice: "Lord Jesus, into Thy hands I commit my spirit. Pray let this be a warning to you all. I wish you all a happy New Year." He lived for ten minutes after the drop fell.

3 January.—On the 3rd January, 1831, twelve agricultural labourers, many men of good character between the ages of twenty and forty, were tried at Salisbury for smashing threshing machines. Their offence was widespread at the time and the present subjection of human beings to mechanisation goes far to justify their instinct, however immoderate their reactions. The prisoners had formed part of a mob of three hundred men who had gone from farm to farm breaking up the machines which threatened their livelihood. The work of destruction often took only a minute, for there were skilled men among them, blacksmiths and carpenters. They ignored a magistrate who warned them and read the proclamation in the Riot Act and only dispersed when the Yeomanry arrived. They were all found guilty.

4 January.—In the cities conditions at this time were even worse. In 1831 the great Bristol riots took place, and on the 4th January, 1832, two youths named Bendall and Sims were tried there for their part in burning the Bishop's Palace. A mob of a hundred men and boys had hammered in the gates in eight minutes, destroyed the china, glass and furniture, and set fire to four beds. When the house was well ablaze they had carried the books from the Chapter House and thrown them into the flames. In this progressive occupation Bendall had been very active. Both the prisoners were found guilty and sentenced to transportation for life.

5 January.—On the 5th January, 1660, Pepys recorded the news that General Monk was coming to London and "that the President Bradshaw's lodgings were to be provided for Monk at Whitehall." Thus two months after his death poetic justice began to overtake the stern republican lawyer who had condemned Charles I to death. Under the Commonwealth he had presided over Cromwell's High Court of Justice and over the Council of State. He had died an unrepentant extremist and been buried with great pomp in Westminster Abbey. Now men were willing to give over his lodging to the soldier who was to undo his work and restore the monarchy.

The Week's Personality.

Gerald Fitzgibbon did not reach eminence at the Irish Bar by the usual channels. The son of a Limerick farmer, he at first received only such education as was to be had in the vicinity of his father's farm, and at the age of twenty-one he became a clerk in a Dublin business house. The study of the classics, however, filled his leisure hours and he entered Trinity College. At the age of twenty-seven he was called to the Bar and two years later he took his degree as M.A. During his legal training he supported himself by teaching. Once qualified, he found rapid success to compensate him for his early difficulties. His mercantile experience proved very useful at the Bar and in eleven years he was in a position to take silk. Determined, indefatigable, methodical and most highly honourable, he enjoyed a fine reputation. Party politics and its struggles he disliked, and this probably prevented him from aspiring to high judicial office. In 1860, however, he accepted the post of receiver-master in Chancery, retaining it for twenty years. He died in 1882. He wrote several books on the questions then agitating the Irish mind. In particular, he advocated as a solution of the land difficulty that farmers should be granted fixity of tenure provided they executed improvements on their holdings. In 1844, soon after he took silk, he was the central figure in an extraordinary incident when some expressions of his in the course of a case so offended the Attorney-General that he sent him a challenge to a duel. The intervention of the court eventually smoothed the affair out.

Hot and Cold.

Last term while the Court of Appeal was sitting in a basement shelter one day the Master of the Rolls suggested that Serjeant Sullivan who was engaged in the case might find the open doorway near him too cold. "The superficial area of some counsel," replied the Serjeant "does not present much bodily surface to the draught." Those who have been discriminating enough to read his reminiscences will recall a delightful sketch of "Bones" Sullivan standing beside "Belly" McSwiney, drawn when they were both King's Serjeants in Ireland, and will understand what he meant. Whether or not there is a scientific law of protective leanness, the attitude of Bench and Bar towards draughts has long run to extremes from Mr. Baron Parke, who on the coldest day of early spring would insist on every window in court being open, to a much later judge, who would have them all shut and get a policeman to sit on the ventilator. Among the adherents of the former school can be numbered Judge Konstam, the "fresh air judge," who once in ordering the opening of the windows complained that "asphyxia seems to be a favourite form of death in many of our courts." Between the two forms of suffering Mr. Justice Goddard found himself in a difficult position at Durham a couple of years ago, for while he complained that "judges, jury and counsel can hardly keep awake sometimes because of the stifling atmosphere," he found that "the only way of ventilating this court is by opening a series of doors on the left of the judge causing a cold draught on one side of his face."

Fire in Bristol.

The flames which destroyed the old Crown Court at Bristol during an air-raid very fairly spared the new Civil Court, for that was put up five years ago to replace a building likewise burnt down, a structure of which MacKinnon, L.J., in his new book of circuit reminiscences, writes: "I do not remember that there is any reason to regret it." I wonder whether the great Sword of Justice, which hung on the walls of the Crown Court, perished. Ordeal by fire is no new thing for Bristol. The great riots of 1831 were among the fiercest popular outbursts these islands have seen, the old Mansion House, the Bridewell and the Bishop's Palace being burnt by the mob. In the result a Special Commission sat to try a hundred and two prisoners, but though eighty-one were convicted only five were hanged.

BEWARE!

We have been asked to call our readers attention to a man who has been going round obtaining money by means of worthless cheques.

The common course adopted by him is to call on a firm of solicitors and tell some story about having disposed of property, that his residence in London has been bombed, and that he is desirous of a local solicitor negotiating for the purchase of a property on his behalf. After obtaining the confidence of the solicitor, he asks to be recommended to a tobacconist, wine merchant, and draper's shop. After obtaining this information, he calls on a shop keeper, says he has been recommended by the solicitor, and obtains goods, usually cigars, wines or ladies' clothing by means of a worthless cheque. He not infrequently poses as a colonel, using a variety of false names.

The man is aged about fifty, height 5 feet 10 inches to 5 feet 11 inches, well built, very smart appearance, very plausible, round face, irongrey moustache and hair, usually dressed in a black Homburg hat, black overcoat, dark suit and white stiff collar.

Notes of Cases.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Punjab Co-operative Bank, Ltd., Amritsar *v.* Income Tax Commissioner, Lahore.

Viscount Maugham, Lord Russell of Killowen, Lord Wright, Sir George Rankin and Mr. M. R. Jayakar. 22nd July, 1940.

Constitutional law (India)—Appeals from High Court—Not necessary for High Court to record in every case withholding of certificate for appeal to Federal Court.

Revenue—Income tax—Bank—Sale of securities to meet emergency withdrawals—Whether profits on sale taxable—Not necessary for sale to be part of separate business—Sale for emergency purposes part of ordinary course of banking business.

Appeal from a decision of the High Court, Lahore, on a reference under s. 66 (2) of the Indian Income Tax Act, 1922.

The appellant bank held securities some of which they sold during 1935 at a profit of Rs.59,88,550, and they were assessed to income tax in respect of that sum as part of their profits. The Assistant Income Tax Commissioner, Amritsar, dismissed an objection to the assessment, the High Court upheld that decision, and the bank now appealed. A preliminary objection to the appeal was raised by the respondent on the ground that the High Court had not placed on record that it had withheld a certificate under s. 205 (1) of the Government of India Act, 1935, that the case involved a substantial question relating to the interpretation of that Act so as to necessitate that the appeal should be to the Federal Court and not to His Majesty. The objection was overruled. (*Cur. adv. vult.*)

Viscount Maugham, delivering the judgment of the Board and dealing first with the objection, said that it was clear that s. 205 did not provide for a case where no certificate was given however plain it might be that it ought to have been given. There was no provision, express or implied, taking away from His Majesty in Council the right to entertain a direct appeal in such a case; and *a fortiori* there was nothing taking away the right of direct appeal to His Majesty in Council in a case where no substantial question of law relating to the Act of 1935 could by any reasonable possibility arise. If it became manifest to the Board that the High Court had neglected its duty under the latter part of s. 205 (1) to give a certificate in a case where the specified question of law was or might reasonably be involved, the Board would not think it right to hear the appeal until a proper certificate had been obtained or it was on record that a certificate had been withheld. That had happened in *Mackay* v. *Forbes* (1939), 83 Sol. J. 958; L.R. 47 I.A. 64. Their lordships had come to the conclusion that the duty imposed on the judges by words of a directory character such as those of s. 205 (1) was one which arose only in a case where there was some reasonable ground for thinking that the specified question might be involved. The section on its true construction was dealing only with cases where there was a reasonable possibility that the specified question might arise, and the duty to certify or withhold a certificate was imposed on the judges of the High Court only in those cases. With regard to the substantive question in the appeal, the bank contended that they had resorted to the sale in order to meet exceptionally heavy withdrawals by depositors; that they did not deal in shares and securities; and therefore that the profit on the sale in question was not taxable. Their lordships did not wish to give support to the contention that in order to render taxable profits on sales of investments in a case like the present it was necessary to establish that the taxpayer had been carrying on a separate business of buying or selling investments or of merely realising them. The principle to be applied was well stated in *Californian Copper Syndicate* v. *Harris* (1904), 6 F. 894, approved in *Commissioner of Taxes* v. *Melbourne Trust, Ltd.* [1914] A.C. 1001, at p. 1010. *Dicta*, which appeared to support that contention, for example, in *Inland Revenue Commissioners* v. *Scottish Automobile & General Insurance Co.* (1932), 16 T.C. 381, at pp. 388, 389, could not now be relied on. To realise securities in order to meet withdrawals by depositors was a normal step in carrying on banking business. The appeal should be dismissed.

Counsel: *Needham*, K.C., and *Mustoe*; *Tucker*, K.C., and *Wallach*. Solicitors: *Douglas Grant & Dold*; *The Solicitor, India Office*.

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

HOUSE OF LORDS.

Lewis *v.* Denye.

Viscount Simon, L.C., Lord Atkin, Lord Thankerton, Lord Romer and Lord Porter. 27th June, 1940.

Factory and workshop—Machinery not so safe as if securely fenced—Injury to workman—Workman's negligence—Effect—Woodworking Machinery Regulations, 1922 (*S.R. & O.*, 1922, *No.* 1196)—*Factory and Workshop Act*, 1901 (1 *Edw.* 7, *c.* 22), *s.* 10.

Appeal from a decision of the Court of Appeal (55 T.L.R. 391; 83 Sol. J. 192), affirming a decision of Tucker, J.

A boy who had been employed for seventeen months in cutting timber with a circular saw suffered injury involving the amputation of the thumb and some fingers of his left hand. He brought an action for damages against his employer. Tucker, J., held that the accident occurred through his failure to use the push-stick provided for him and that it could not have happened had he used it. He also found that the defendant had broken a statutory duty in that the saw was not as securely fenced as the Factory and Workshop Act, 1901, s. 10, required. He, however, dismissed the action on the ground that the plaintiff caused the accident by himself failing to perform a statutory duty. By reg. 11 of the Woodworking Machinery Regulations, 1922: "A suitable push-stick shall be available for use at the bench of every circular saw which is fed by hand to enable the work to be carried on without unnecessary risk." By reg. 23: "Every person employed on a woodworking machine shall . . . (ii) use the 'spikes' or push-sticks and holders provided in compliance with Regulations 11, 14, 18 and 19; except when owing to the nature of the work being done the use of the guards and appliances is rendered impracticable." The plaintiff appealed. (*Cur. adv. vult.*)

Viscount Simon, L.C., said that he agreed with the finding that the plaintiff's own negligence had caused the accident. Tucker, J., had found that the defendant had carried out all the requirements of the regulations incumbent upon him, so far as relevant to the accident; but he went on to hold that, nevertheless, s. 10 was not complied with, inasmuch as, by reason of the exposed teeth of the saw at the point of entrance, the machine could not be said to have been "securely fenced." *Caswell* v. *Powell Duffryn Associated Collieries, Ltd.* [1939] A.C. 152; 83 Sol. J. 976, established that negligence in the workman causing or contributing to the accident was a defence in an action alleging failure to fence securely. That principle, there applied to the Coal Mines Act, 1911, applied equally to the Act of 1901. That disposed of the appeal, but he (his lordship) wished to make clear what was and what was not now being decided. Did s. 10 impose an obligation to provide such a degree of secure fencing for a dangerous machine as made the machine no longer dangerous at all to a reasonably careful workman, even though that result could only be attained at the expense of making the use of the machine impracticable, and hence in effect prohibiting its use altogether? Or was a dangerous machine to be regarded as "securely fenced" under s. 10 if the fencing protected the workman from danger so far as that could practicably be done, consistently with the machine being used? The first of those two views might, if correct, amount to a prohibition of the use of circular saws altogether, even of the most modern type; and he would be extremely unwilling to make the present case the occasion for a final pronouncement on that important issue, unless it were necessary. It was not, and he reserved his opinion of the correctness of the view of Salter, J., in *Davies* v. *Thomas Owen & Co., Ltd.* [1919] 2 K.B. 39, which would interpret s. 10 as meaning that "if a machine cannot be securely fenced while remaining commercially practicable or mechanically useful, the statute in effect prohibits its use." The appeal would be dismissed.

The other noble lords concurred.

Counsel: *Hemmerde*, K.C., *E. A. MacDonald*, and *Pappworth*; *Hartley Shawcross*, K.C., and *Glynn Blackledge*.

Solicitors: *Field, Roscoe & Co.*, for *Berkson & Berkson*, Birkenhead; *W. Stanley Eastburn*, for *Herbert J. Davis, Berthen & Munro*, Liverpool.

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

COURT OF APPEAL.

Southern *v.* Watson and Others.

Scott, Clauson and Goddard, L.JJ. 2nd July, 1940.

Revenue—Income tax—Sale of business—Part of profits on orders executed after certain date after sale to be paid to vendor—New trade—Vendor liable to tax—Income Tax Act, 1918 (8 *& 9 Geo.* 5, *c.* 40), *All Schedules Rules*, *r.* 18.

Appeal from a decision of Lawrence, J.

By an agreement for the sale of his business to a limited company, the vendor undertook to sell the goodwill of his business as a going concern as from the 9th August, 1934, in consideration of a payment of £10,000 on completion and an annual payment of £2,500, less tax, to the vendor and his wife during the life of either. All commission or profits on orders executed on or before the 9th August, 1934, were to belong to the vendor. All orders received, but not executed, before that date were to be executed by the company, the vendor receiving 75 per cent. of the profits. In pursuance of that provision the company duly paid to the vendor, or, after his death, his personal representatives, £10,607. An assessment to income tax having been made on them in respect of that sum, the personal representatives objected, it being contended on their behalf that the £10,607 was not a receipt of the trade carried on by the deceased before or (through the company as his agent) after the 9th August, 1934; and that no new trade was set up as from that date. It was contended for the Crown that the sum in question was properly assessed as profits of the trade carried on after his death by the vendor through the company as his agent, and that those profits must be assessed under r. 18 of the General Rules applicable to all Schedules to the Income Tax Act, 1918, as they had not been taxed in the vendor's lifetime. Reference was made to *Dott* v. *Brown* (1936), 80 Sol. J. 245; 154 L.T. 484; *Baker* v. *Cook* (1937), 81 Sol. J. 765; 21 T.C. 339; *Shipstone (James) & Sons, Ltd.* v. *Morris* (1929), 14 T.C. 413; and *Hillerns & Fowler* v. *Murray* (1932), 146 L.T. 474. The commissioners held that the sum in

question was a capital receipt not liable to tax because it was part of the purchase price of the business. Lawrence, J., reversed that decision, and the deceased's personal representatives now appealed.

SCOTT, L.J., said that he agreed with Lawrence, J.'s, view that the sums paid under the material clause of the agreement were profits from a new business which the parties had chosen to set up and in which the company acted as agents for the deceased. While the business in question was admittedly connected with the deceased's old business, it was a new business in that it was carried on in a different way from the old business. It did not form part of the old business, and its profits were not included in the purchase price. The company were undoubtedly liable to tax in respect of their 25 per cent. of the profits, and Lawrence, J., had been unable to see any reason why the deceased or his personal representatives should not be taxed in respect of their 75 per cent. He (Scott, L.J.) entirely agreed, subject to the comment that it might possibly be that the agreement could be construed as excluding the orders in question from the sale, so that the deceased was carrying on that part of his old business until those orders were executed and paid for. Whichever view were taken, the commissioners' decision that the sum received represented capital was wrong. The appeal must be dismissed.

COUNSEL: *Needham*, K.C., and *M. Rowe*; *The Solicitor-General* (Sir William Jowitt, K.C.) and *R. P. Hills*.

SOLICITORS: *Drake, Son & Parton*; *The Solicitor of Inland Revenue*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Ex parte Lees.

Humphreys, Oliver and Croom-Johnson, JJ. 10th Septemb r, 1940.
MacKinnon, Goddard and du Parcq, L.JJ. 2nd October, 1940.

Habeas Corpus—Defence Regulations—Detention—Grounds for—Home Secretary's reasonable and honest belief—Defence (General) Regulations, 1939 (*S.R. & O.*, 1939, *No.* 927), *reg.* 18B (1A).

Motion for a writ of *habeas corpus*.

The applicant, Aubrey Trevor Oswald Lees, by his application, asked that the court might order that a writ of *habeas corpus* should be issued, directed to the Home Secretary, Sir John Anderson, to have the applicant before the court immediately after the receipt of the writ for the consideration by the court of all the necessary matters concerning his detention in prison. In an affidavit the applicant stated and submitted, *inter alia*, as follows: He had been detained by the executive without charge or trial and therefore in a manner *prima facie* contrary to the liberties granted by the Great Charter and the Bill of Rights. He was a British subject by birth, and, since the 20th June, 1940, he had been detained in Brixton, Liverpool, and Stafford Prisons by the order of the Home Secretary. At the moment of his arrest he was given a copy of what purported to be an order whereunder he was detained. He had no means of knowing whether or not such an order had in fact been made. The order stated that whereas the Home Secretary had reasonable cause to believe that he had been or was a member of, or had furthered the objects of, an organisation in respect of which the Home Secretary was satisfied (*a*) that those in control of the organisation had had associations with persons concerned in the Government of a Power with which His Majesty was at war; and (*b*) that there was danger of the utilisation of the organisation for purposes prejudicial to the public safety, therefore, in pursuance of the powers conferred on him by reg. 18B (1A) of the Defence (General) Regulations, 1939, the Home Secretary directed that the applicant should be detained. The applicant submitted that the order was bad for ambiguity, as it was impossible to tell whether it was made on the ground that the Home Secretary had reasonable cause to believe that he had been or was a member of an organisation or on the ground that he had reasonable ground to believe that he had furthered such an organisation. Further, the Home Secretary never had reasonable or any cause to believe that he had been a member, or had furthered the objects of, any such organisation as mentioned in reg. 18B (1A). Particulars subsequently furnished to the applicant had alleged that he had expressed pro-Fascist views; had furnished the organisation known as the British Union with materials for propaganda; had attended meetings at which Sir Oswald Mosley was present, such meetings being held for the purpose of co-ordinating Fascist and anti-Semitic activities in Great Britain, and for negotiating a peace with the leader of the German Reich; and that he had been propagating anti-British views and endeavouring to hinder the war effort in Great Britain with a view to a Fascist revolution. The applicant specifically denied those allegations, and he contended that the Home Secretary had never had reasonable cause to believe him to be a person to whom the regulation applied, and that therefore the order for his detention was invalid. (*Cur. adv. vult.*)

HUMPHREYS, J., delivering the judgment of the court, said that there was nothing in the applicant's point that the order for his detention was bad for duplicity because it stated in the alternative the two allegations of his membership of and activity in connection with the objects of the organisation in question. The order was neither a conviction, an indictment nor a charge. There was nothing in the statute or the regulations requiring the order to be in any particular form. As to the remaining point, that the order was invalid because the Home Secretary never had any reasonable cause to believe that the applicant was a person to whom the regulation applied, the court, on an application for a writ of *habeas corpus* undoubtedly had power to inquire into the validity of the detention order, and for that purpose to ascertain whether the Home Secretary had reasonable cause for the belief expressed in the order. The Crown, however, disputed that the court must have before it all the material on which the belief was based in order that it might decide whether there was reasonable cause for the belief. The Home Secretary was bound, if he acted, to do so on information, supplied by others, which was necessarily confidential. The disclosure of such information might be highly prejudicial to the interests of the State. Moreover, a Divisional Court, sitting on an application for a writ of *habeas corpus*, was not an appellate court. It was not for the court to decide whether or not the applicant should be interned, but only whether his detention was legal: see Lord Finlay's speech in *R.* v. *Halliday*, 61 SOL. J. 443; [1917] A.C. 260, at p. 269. No general rule could be laid down how a court should decide whether the Home Secretary had reasonable cause for his belief. Each case must be determined on its own facts. Accepting as it did the statements made on affidavit by Sir John Anderson, the court was satisfied that he had reasonable cause for believing that the applicant was a person to whom reg. 18B (1A) applied. The motion must be dismissed. The applicant appealed.

When the appeal was called on, it was stated that the applicant had meanwhile been released from prison. The appeal was accordingly argued only for the purpose of determining the application made on behalf of the applicant, but opposed by the Crown, for the costs of the appeal

MACKINNON, L.J., said that he agreed entirely with the judgment of the Divisional Court. The Home Secretary's order followed precisely the terms of reg. 18B (1A) under which he acted. It was clear from the terms of that regulation that, if the Home Secretary honestly believed or had reasonable cause to believe that a person was within the category in question, he was authorised to make an order for his detention. The sole question was whether the Home Secretary had reasonable cause to believe, and did honestly believe. He had sworn in an affidavit that on reports received from persons whom he regarded as reliable he had come to the conclusion that there were clear grounds for believing, and that he did believe, that Lees had the alleged connection with the organisation specified. The suggestion could not be accepted that in every case of this kind the court could be made to act as a Court of Appeal from the Home Secretary's exercise of his discretion; could inquire into the grounds on which he had formed his belief; and could consider whether there were any grounds for the belief, or, if there were grounds, whether they were reasonable. The Home Secretary had sworn that he had, in the confidential reports submitted to him, grounds for belief; that he had concluded that there were clear grounds for believing; and that he did in fact believe. He had therefore proved that he had complied with the conditions of the regulation. The appeal must be dismissed, with costs.

COUNSEL: *Gerald Gardiner* and *J. W. Williamson*; *The Solicitor-General* (Sir William Jowitt, K.C.) and *Valentine Holmes* (for the Home Secretary)

SOLICITORS: *Oswald Hickson, Collier & Co.*; *The Treasury Solicitor*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

HIGH COURT—CHANCERY DIVISION.

Clavering *v.* Conduit Mead Co.

Morton, J. 6th December, 1940.

Practice—Ground lease—War damage—Application to disclaim—Proceedings in county court—Removal to High Court—County Courts Act, 1934 (24 & 25 *Geo.* 5, *c.* 53), *s.* 111—*Landlord and Tenant* (*War Damage*) *Act*, 1939 (2 & 3 *Geo.* 6, *c.* 72), *ss.* 13, 23.

Motion.

The applicant was lessee under a ground lease for a term of ninety-nine years of certain premises in Conduit Street and Bond Street which have suffered war damage. He had started proceedings under s. 13 of the Landlord and Tenant (War Damage) Act, 1939, in Westminster County Court for leave to serve a notice of disclaimer in respect of the ground lease, the lessors being the respondents. This application was begun in the county court by reason of s. 23 (1), which provides: "Subject to the provisions of s. 111 of the County Courts Act, 1934 (which provides for the removal into the High Court of any proceedings commenced in a county court), the jurisdiction of the court under this Act shall be exercised by a county court." The applicant by this motion applied to have the application transferred to the High Court. Section 111 of the County Courts Act, 1934, provides: "The High Court or a judge thereof may order the removal into the High Court, by writ of *certiorari* or otherwise, of any proceedings commenced in a county court, if the High Court or judge thereof thinks it desirable that the proceedings should be heard and determined in the High Court."

MORTON, J., said that as these were proceedings in the Chancery Division an order would not be by writ of *certiorari*. The words "or otherwise" in s. 111 of the Act of 1934, however, covered the case. In the circumstances it was desirable that the proceedings should be heard in the High Court. The amount involved was large, expert evidence would probably be required, and there was the further important fact that the Landlord and Tenant (War Damage) Act, 1939, was a new Act on which there had as yet been no judicial decision, and

in the present case important questions of law might arise. The application was not opposed but rather supported by the respondents. In these circumstances he would make the order.

COUNSEL: *Turnbull*, for the applicant; *Merlin*, for the respondents.
SOLICITORS: *Hyman Isaacs, Lewis & Mills; Capron & Co.*

[Reported by Miss B. A. BICKNELL Barrister-at-Law.]

In re An Application by the National Provincial Bank, Ltd.

Farwell, J. 10th December, 1940.

Mortgage—Charge to bank—Mortgagor not indebted to bank—No covenant to pay—Application by bank for leave to realise their security—"Person liable to satisfy debt"—Meaning—Courts (Emergency Powers) Act, 1939 (2 & 3 *Geo.* 6, *c.* 67), *s.* 1 (1), (2) *and* (4).

Adjourned summons.

By this application under the Courts (Emergency Powers) Act, 1939, the applicant bank asked for leave to proceed to exercise any remedies which were available to it by way of the realisation of the leasehold property which was mortgaged to it by a legal charge dated the 1st April, 1935, made between the respondent of the one part and the bank of the other part. The legal charge was in the form usually employed by banks where the mortgagor is not charging property to secure his own debt but moneys owing by a third person. By the legal charge the respondent charged all his leasehold premises with payment to the bank on demand of all moneys from time to time due to the bank upon banking account by M, the respondent's daughter. The charge contained no covenant by the respondent to pay the moneys due to the bank. M failing to pay the moneys she owed, the bank demanded payment from the respondent and started these proceedings for leave to exercise their rights as mortgagees. The respondent opposed the application and filed evidence intended to show that the court should exercise the discretion conferred on it by subs. (4) of s. 1 of the Act and not grant leave. The bank contended that in fact it did not require the leave of the court, as the Act did not apply to this case. Section 1 (4) of the Act provides that: "If, on any application for such leave as is required under this section for the exercise of any of the rights and remedies mentioned in subsections (1), (2) and (3) of this section, the appropriate court is of opinion that the person liable to satisfy the judgment or order, or to pay the rent or other debt, or to perform the obligation, in question is unable immediately to do so by reason of circumstances directly or indirectly attributable to any war in which His Majesty may be engaged, the court may refuse leave for the exercise of that right or remedy, or give leave therefor subject to such restrictions and conditions as the court thinks fit."

FARWELL, J., said s. 1 of the Act applies in this way: It is for the person seeking to exercise any remedy within subs. (2) to apply to the court for leave. The person against whom leave is sought has to show that he is entitled to relief by bringing himself within subs. (4). To do this he has to satisfy the court that he is a person "liable to satisfy the judgment or order, or to pay the rent or other debt or to perform the obligation," and that he is "unable immediately to do so by reason of circumstances directly or indirectly attributable to the war." The respondent had to satisfy the court that he was a person liable to perform the obligation against which he was seeking relief. In the present case he was under no obligation to the bank. He was in this position: He must either find the money which was demanded of M or the bank would be entitled to realise their security. He was under no obligation to pay the money. This was not a case within the Act at all. It might be a *casus omissus*. It was not for him to make a remedy by giving to the words "perform the obligation" a meaning which they could not bear. He was therefore unable to give to the respondent any relief under the Act. It had been suggested that he, the learned judge, should allow M, who owed the money, to be added as respondent. It was not for him on the respondent's application to add M as a party to the summons. If the bank choose to proceed to exercise its remedy against the property itself and it should thereafter turn out that it ought to have got leave of the court against M, that would be its peril. As far as this summons was concerned, it must be dismissed on the ground that no leave was necessary.

COUNSEL: *P. B. Morle*, appeared for the applicants; *W. J. K. Diplock* (for *J. C. B. W. Leonard*, on war service) appeared for the respondents.

SOLICITORS: *Wilde, Sapte & Co.: Cripps, Harries, Hall & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

The Metropolitan Leather Co., Ltd. *v.* Herrmann.

Farwell, J. 10th December, 1940.

Practice—War damage—Application in county court—Ex parte application to remove to High Court—Validity—County Courts Act, 1934 (24 & 25 *Geo.* 5, *c.* 53), *s.* 111—*Landlord and Tenant (War Damage) Act*, 1939 (2 & 3 *Geo.* 6, *c.* 72), *ss.* 15, 23.

Motion.

By a lease of 1937 the defendants demised to the plaintiff company, first, No. 86, Bermondsey Street, and secondly, certain premises lying in the rear of the first premises for a term expiring in 1950. In September, 1940, the firstly demised premises were destroyed by fire caused by enemy action. On the 9th October, 1940, the plaintiffs served on the defendants a notice under the Landlord and Tenant (War Damage) Act, 1939, disclaiming the lease. While admitting that the first premises had become unfit, the defendants contended that the lease was a multiple lease and applied to the Southwark County Court under s. 15 of the Act for a declaration to that effect. The plaintiffs denied that the lease was a multiple lease. They applied by motion *ex parte* for an order under the County Courts Act, 1934, s. 111, to remove the plaint from the county court into the Chancery Division of the High Court.

FARWELL, J., said, according to the White Book (1940, p. 2593), the practice in the Chancery Division was that an application under s. 111 of the County Courts Act, 1934, to remove proceedings from the county court to the High Court was made *ex parte*. That seemed to him an odd sort of procedure, because it did not give to the other side an opportunity of objecting to the removal into the High Court. He would not, however, refuse the application on the ground that it was made *ex parte*, but he would protect the defendants by directing that the order contain a provision that the defendants be at liberty on two days' notice to apply to discharge the order.

COUNSEL: *Pennycuick.*

SOLICITORS: *Constant & Constant.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

HIGH COURT—KING'S BENCH DIVISION.

Cullen *v.* Jackson; Garry *v.* Same.

Croom-Johnson, J. 10th July, 1940.

Measure of damages—Loss of expectation of life.

Consolidated actions under the Law Reform (Miscellaneous Provisions) Act, 1934.

The plaintiffs were the respective fathers of two girls, aged eleven and eight years, who died after being knocked down by a motor-car driven by the defendant; and they brought these actions as administrators of their daughters' estates. Liability being admitted, only the question of damages was argued.

CROOM-JOHNSON, J., said that he would do his best to follow all the guidance laid down for his extremely difficult task in *Rose* v. *Ford* [1937] A.C. 826; 81 SOL. J. 683. There were later cases which he was also bound to follow, and he accepted what had been said of the matters which must be taken into account in cases of the kind. Now, when there were perils, inescapable and unforeseen, hanging over everyone at every moment, it was impossible to say that the expectation of life was the same as it had been in 1935. The Court of Appeal had, however, said that some regard must be had to what was done in *Rose* v. *Ford*, *supra*, because the assessment of damages in that case was, by agreement, the court's own assessment. With the deepest respect he did not understand how the fact that the Court of Appeal had determined a pure question of fact in a particular way could be of more assistance to a judge in assessing damages than the decision of any other question of fact by any other court, whether the lowest or the highest. Apart from such considerations, he could find neither a criterion nor any assistance in assessing damages in the case of the loss of expectation of life of a girl of eight or eleven years from what the court did in the case of an unmarried woman of twenty-three. In assessing the damages he derived not the smallest assistance from the fact that in the case of a woman of twenty-three the Court of Appeal considered that £1,000 was the proper sum to award, or that in other cases different sums had been awarded. Taking into consideration the risks from illness, and the other risks to which children were subjected at the present time, he would award £700 and £600 respectively.

COUNSEL: *J. Davidson; Edgedale* and *Armstrong-Jones.*

SOLICITORS: *Rexworthy, Bonser & Wadkin; Stanley & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Triefus and Others *v.* Winston and Others.

Humphreys, J. 17th July, 1940.

Contract—Agreement to enter into a legal contract—Conditions on which enforceable.

Action for damages for breach of contract and libel. (The case is reported only on the claim in contract.)

In September, 1938, a large rough diamond, known as the Getulio Vargas, of some 726 carats, was found in the interior of Brazil. The plaintiffs alleged that it was orally agreed in October, 1938, between them and a limited company, as agents for the defendant, Winston, that the plaintiffs and Winston should enter into a partnership or joint adventure with a view to the purchase of the diamond for their joint account and for its sale at a profit. The plaintiffs claimed damages, alleging that in March, 1939, Winston secretly bought the diamond for some £50,000, and that he had threatened to sell it in his own name or in that of an American company which he controlled. Winston denied the agreement or that the limited company had any authority to make such an agreement on his behalf. He admitted that he had purchased the diamond and that he did not intend consulting with the plaintiffs before it was resold.

HUMPHREYS, J., said that the only inference to be drawn from the correspondence and cablegrams passing between the parties was that they were firmly of opinion that they had made a contract which was

enforceable at law by either of them. If the plaintiffs were right in saying that there had been a contract that the diamond should be bought for their joint account, there was no doubt about the breach of that agreement. The short question for decision, therefore, was whether the agreement was, as counsel for the defendants argued, hopelessly vague, and unenforceable because merely an agreement that the parties would later enter into a legal contract of partnership. The law was that, where parties only agreed to make a contract in the future, the courts would enforce such an agreement only if it contained the material terms which were to be in the contract itself when made. The case was not one of that kind. The agreement here had been one whereby the parties undertook that they would then and there do something for their mutual benefit. It was immaterial that many matters might have to be settled between the parties in the carrying out of the agreement later. The one question which was not in the minds of the parties as likely to arise was whether the original agreement was a legal and enforceable one. It could not be doubted in the circumstances of the case that if Winston sold the diamond at a profit he held that profit as to half in trust for the plaintiffs, for there was a perfectly legal and completed agreement between the parties that the diamond should be bought for their joint benefit. There was nothing in the authorities which counsel for the defendants had cited to make him (his lordship) doubt the correctness of that conclusion. His lordship awarded the plaintiffs £500 on the claim for libel, dealt with the claim for an injunction, and said that there must also be judgment for the plaintiffs for £500 for breach of contract.

COUNSEL: *Sir Patrick Hastings*, K.C., and *Gerald Gardiner; Pritt*, K.C., and *H. C. Marks*.

SOLICITORS: *Bull & Bull; Guedalla & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

In re Shelmerdine and Others.

Viscount Caldecote, C.J., Hawke and Humphreys, JJ.
22nd October, 1940.

Habeas corpus—Defence Regulations—Detention—Right of detained person to have case considered by Advisory Committee—Delay—Defence (General) Regulations, 1939 (*S.R. & O.*, 1939, *No.* 927), *reg.* 18B.

Motions for writs of *habeas corpus*.

The applicants were persons detained in various of His Majesty's prisons under reg. 18B of the Defence (General) Regulations, 1939. The applications were made on the ground of delay in affording the applicants their rights under the regulation. Counsel contended on their behalf that the regulation did not expressly or impliedly abrogate their right at common law to a speedy trial, by the appropriate tribunal, which in the present case was the Advisory Committee to the Home Office. If the procedure under reg. 18B were delayed, then the only right which those parties had under the regulation would be denied to them. While the detentions were not punitive but protective, and while to that extent the Advisory Committee was not in the normal sense a court of law, nevertheless it was the only tribunal to which the four detained subjects could state their case. There was no procedure known to the law, except that by writ of *habeas corpus*, which could avail any subject of the Crown who was placed in detention by the Home Secretary. The Executive had been empowered by law to do certain things—namely, to deprive members of the public of their freedom in certain conditions. It was a duty of the court to inquire whether the subject's liberty was being interfered with in accordance with the law or not; and if the result of the regulations was that those persons were for ninety or 100 days detained without any form of redress, the court should declare that such delay was inordinate. Counsel contended that there had been so much delay in bringing the cases before the Advisory Committee that the detention of the applicants was illegal *ab initio*, or, at any rate, had become so. The court ought to say that writs of *habeas corpus* should issue if within such time as seemed reasonable to the court the applicants were not brought before the Advisory Committee and their cases heard. The application really was to have the proceedings hastened; for the Habeas Corpus Acts laid down a time within which the detained person should be brought to trial. The applicants' case was that the working of the regulation had been so dilatory that it amounted to a denial of justice. There was no means of compelling the Home Secretary or the Advisory Committee to act except by coming to that court. There should, counsel contended, be an order of *habeas corpus* in order that the bodies of the applicants should be brought before the court and an order should follow for their release unless the procedure under the regulation were put into operation. Sir John Anderson stated in an affidavit that the delay with regard to the applicants was due to the great number of similar cases which had to be dealt with and that Advisory Committees were dealing with appeals in rotation. The present Home Secretary swore an affidavit that since his taking office as Home Secretary he was satisfied that everything was being done to dispose of the cases with the utmost expedition, and that the cases of all the applicants would shortly come before the Advisory Committee.

VISCOUNT CALDECOTE, C.J., said that there was no ground for making an order of *habeas corpus*. The court did not accept the contention that there had been a greater delay than there should have been. If the affidavits of the present Home Secretary and his predecessor were accepted, there was no ground on which the applicants could contend that any rights had been denied to them. Having said that, he wished to repeat that, in these cases of the liberty of the subject, it was essential that all possible expedition should be used. The court would always take the view that, when powers of the kind in question were exercised, it should be with due regard to the fact that the liberty of the subject was involved, the subject therefore being given the full rights contained in the regulation conferring on the Home Secretary the powers under which he acted.

HAWKE and HUMPHREYS, JJ., agreed.

COUNSEL: *F. W. Wallace* and *J. W. Williamson; The Attorney-General* (Sir Donald Somervell, K.C.) and *Valentine Holmes*.

SOLICITORS: *Oswald Hickson; Collier & Co.; The Treasury Solicitor*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Practising Certificates.

Sir,—We have recently had some correspondence with the Secretary of Inland Revenue on the subject of the practising certificates of solicitors serving with His Majesty's Forces, which we observe is noted in "Current Topics" in your issue of the 7th instant. We address this letter to you in case our experience may be of assistance to other members of the profession. It is, we believe, a common arrangement among firms of solicitors that partners who are serving continue to take their share of the firm's profits, bringing into the firm their service pay. The letter quoted in *The Law Society's Gazette* for February, 1940, addressed by the Secretary of the Board of Inland Revenue to The Law Society, expressly states that stamp duty on certificates will be repaid in the case of solicitors "who have taken no active part in conducting the business of their firm while so engaged." On making inquiry at the Stamp Duty Office recently, however, we were informed that stamp duty would be repaid where the solicitor had "taken on share of the firm's profits." Acting on the suggestion of the Department at Bush House, we wrote to the Secretary of Inland Revenue, Llandudno, and have now had a letter confirming that a claim for return of stamp duty will be considered on production of a statutory declaration setting forth (*inter alia*) that during the period of the claim the solicitor "has not taken any part in his profession of a solicitor."

London, E.C.4. MERRIMANS.
23rd December.

Obituary.

MR. H. A. P. HATTEN.

Mr. Harry Ambrose Philip Hatten, solicitor, of Messrs. Maitland, Peckham & Co., solicitors, of 2, Amen Corner, Paternoster Row, E.C.4, died recently at the age of sixty-seven. Mr. Hatten was admitted a solicitor in 1896, and also held the appointment of solicitor to the London Central Board.

MR. G. H. THOMPSON.

Mr. George Henderson Thompson, solicitor, of Formby, Lancs, died recently at the age of eighty-one. He was admitted a solicitor in 1882.

Rules and Orders.

S.R. & O., 1940, No. 2120L. /39.

WORKMEN'S COMPENSATION.

JUDICIAL PROCEDURE.

THE WORKMEN'S COMPENSATION (No. 2) RULES, 1940.
DATED DECEMBER 16, 1940.

1. In Form 36 (i) and (ii) in the Appendix to the Workmen's Compensation Rules, 1926,* after the words "[*Here set out copy of agreement decision or award,*" there shall be inserted the words:—

"*If the agreement is in redemption of a weekly payment which includes supplementary allowances under the Workmen's Compensation (Supplementary Allowances) Act*, 1940 (*whether the incapacity is permanent or not and whether the weekly payment has continued for six months or not*), *the sum agreed in respect of the supplementary allowances should be stated separately from the sum agreed in respect of the weekly payment payable under the principal Act.*]"

* S.R. & O. 1926 (No. 448), p. 829.

2.—(1) In paragraph (*e*) of Form 37A in the said Appendix, after the words "*the period for which it was paid,*" there shall be inserted the words :—

"*, and where such weekly payment includes an allowance or allowances under the Workmen's Compensation (Supplementary Allowances) Act, 1940, state separately the amount payable under the principal Act and the amount of each supplementary allowance.*"

(2) The following paragraph shall be added to the said Form 37A after paragraph (*f*) :—

(*g*) The said has the following children under the age of 15 years :—

(*In the case of a male workman here give the name and date of birth of every such child as defined by section* 1 (5) *of the Workmen's Compensation (Supplementary Allowances) Act,* 1940.)

3. These Rules may be cited as the Workmen's Compensation (No. 2) Rules, 1940.

We hereby submit these Rules to the Lord Chancellor.

T. Mordaunt Snagge. *Austin Jones.*
William Procter. *Ernest Hancock.*
A. R. Kennedy.

I allow these Rules, which shall come into operation on the 23rd day of December, 1940.

Dated the 16th day of December, 1940. *Simon,* C.

War Legislation.

(*Supplementary List, in alphabetical order, to those published week by week in* THE SOLICITORS' JOURNAL *from the* 16*th September,* 1939, *to the* 28*th December,* 1940.)

STATUTORY RULES AND ORDERS, 1940.

E.P. 2151. **Central (Coal Mines)** Scheme (Amendment) Order, December 19.

E.P. 2143. **Control of Flax Seed** (No. 3) Order, December 18.

E.P. 2149. **Defence** (General) Regulations, 1939. Order in Council, December 19, 1940, amending Regulations 40B, 54C and 55.

E.P. 2150. Defence (General) Regulations, 1939. Order in Council, December 19, 1940, amending Regulation 23AB and adding Regulation 31C.

E.P. 2153. Defence (War Zone Courts) Regulations, 1940. Order in Council, December 19, 1940, amending Regulation 13.

E.P. 2154. **Emergency Powers** (Isle of Man Defence) (No. 2) Order in Council, December 19.

E.P. 2146. **Food** Rationing Order, 1939. Amendment Order, December 18, 1940.

E.P. 2145. **Livestock** (Sales) Order, 1940, and the Livestock (Restriction on Slaughtering) (No. 2) Order, 1940. General Licence, December 18.

No. 2139. **Metropolitan Police Courts** (No. 4) Order, November 20.

E.P. 2144. **Starch and Dextrine** (Control) Order, December 18.

No. 2093. **Trading with the Enemy** (Specified Persons) (Amendment) (No. 13) Order, December 16.

E.P. 2148. **Turkeys** (Maximum Prices) Order, December 16.

[E.P. indicates that the Order is made under Emergency Powers.]

STATIONERY OFFICE.

Emergency Acts and Statutory Rules and Orders, 1940, List of Supplement 34, December 18, 1940.

Legal Notes and News.

Honours and Appointments.

The King has approved a recommendation of the Home Secretary that Mr. ARTHUR MORLEY, K.C., be appointed Recorder of Leeds, to succeed Mr. J. WILLOUGHBY JARDINE, K.C., who has been appointed a County Court Judge.

The Minister of Information has appointed Mr. C. J. RADCLIFFE, K.C., Chief Press Censor, to be (Acting) Controller of the Press and Censorship Divisions of the Ministry.

Professional Announcements.

(2s. per line.)

As a result of damage to their offices by enemy action, BERRYMANS, of 4, Tokenhouse Buildings, Lothbury, E.C.2, have moved to Kent House, Telegraph Street, E.C.2.

Wills and Bequests.

Mr. Bertie, or Herbert, Metcalfe, of Beaconsfield, Bucks, Metropolitan Police Magistrate at Old Street Police Court, left £4,173, with net personalty £4,079.

BAR COUNCIL.

The Annual General Meeting of the Bar will be held in the Old Hall, Lincoln's Inn, on Friday, 17th January, at 2.30 p.m. The Attorney-General will preside. Any member of the Bar is at liberty to bring forward for discussion at the above meeting any resolution, provided that notice thereof is given in writing to the Secretary of the Council, 5, Stone Buildings, Lincoln's Inn, W.C.2, not later than 4.30 p.m., on Friday, 10th January, and that in the opinion of the Executive Committee of the Council such resolution is a matter of general interest to the Bar.

NOTICE TO CONTRIBUTORS.

The Editor will be pleased to consider for publication contributions and correspondence from any professional source upon matters of legal interest.

All contributions (including correspondence) should be typewritten and on one side of the paper only, and must be accompanied by the name and address of the contributor.

The Editor is unable to accept any responsibility for the safe custody of contributions submitted to him, and copies should therefore be retained. The Editor will, however, endeavour in special circumstances to return unsuitable contributions within a reasonable period, if a request to this effect and a stamped addressed envelope are enclosed with the manuscript.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th October, 1939) 2%. Next London Stock Exchange Settlement, Thursday, 9th January, 1941.

	Div. Months.	Middle Price 31 Dec. 1940.	Flat Interest Yield.	‡ Approximate Yield with redemption.
			£ s. d.	£ s. d.
ENGLISH GOVERNMENT SECURITIES.				
Consols 4% 1957 or after	FA	110½xd	3 12 5	3 3 1
Consols 2½%	JAJO	77	3 4 11	—
War Loan 3% 1955–59	AO	101	2 19 5	2 18 2
War Loan 3½% 1952 or after	JD	103	3 8 0	3 4 0
Funding 4% Loan 1960–90	MN	114	3 10 2	3 0 7
Funding 3% Loan 1959–69	AO	99½	3 0 4	3 0 6
Funding 2½% Loan 1952–57	JD	98	2 16 1	2 18 1
Funding 2½% Loan 1956–61	AO	92½	2 14 2	3 0 4
Victory 4% Loan Average life 21 years	MS	112½	3 11 3	3 3 9
Conversion 5% Loan 1944–64	MN	107½	4 12 10	2 12 1
Conversion 3½% Loan 1961 or after	AO	103½	3 7 8	3 5 2
Conversion 3% Loan 1948–53	MS	103	2 18 3	2 9 9
Conversion 2½% Loan 1944–49	AO	100	2 10 0	2 10 0
National Defence Loan 3% 1954–58	JJ	101	2 19 5	2 18 2
Local Loans 3% Stock 1912 or after	JAJO	89½	3 7 0	—
Bank Stock	AO	339½	3 10 8	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	89½	3 7 0	—
India 4½% 1950–55	MN	109½	4 2 2	3 6 3
India 3½% 1931 or after	JAJO	96	3 12 11	—
India 3% 1948 or after	JAJO	83	3 12 3	—
Sudan 4½% 1939–73 Average life 27 years	FA	109xd	4 2 7	3 19 0
Sudan 4% 1974 Red. in part after 1950	MN	107	3 14 9	3 3 5
Tanganyika 4% Guaranteed 1951–71	FA	109xd	3 13 5	2 18 11
Lon. Elec. T. F. Corpn. 2½% 1950–55	FA	93xd	2 13 9	3 1 9
COLONIAL SECURITIES.				
*Australia (Commonwealth) 4% 1955–70	JJ	105	3 16 2	3 10 11
Australia (Commonwealth) 3½% 1964–74	JJ	93	3 9 10	3 12 5
Australia (Commonwealth) 3% 1955–58	AO	92	3 5 3	3 12 4
*Canada 4% 1953–58	MS	112	3 11 5	2 17 7
New South Wales 3½% 1930–50	JJ	99	3 10 8	3 12 6
New Zealand 3% 1945	AO	98	3 1 3	3 10 10
Nigeria 4% 1963	AO	107	3 14 9	3 11 1
Queensland 3½% 1950–70	JJ	98	3 11 5	3 12 3
*South Africa 3½% 1953–73	JD	102	3 8 8	3 6 0
Victoria 3½% 1929–49	AO	100	3 10 0	3 10 0
CORPORATION STOCKS.				
Birmingham 3% 1947 or after	JJ	81	3 14 1	—
Croydon 3% 1940–60	AO	92½	3 4 10	3 11 1
Leeds 3¼% 1958–62	JJ	96	3 7 8	3 10 5
Liverpool 3¼% Redeemable by agreement with holders or by purchase	JAJO	95	3 13 8	—
London County 3% Consolidated Stock after 1920 at option of Corporation	MJSD	85	3 10 7	—
*London County 3½% 1954–59	FA	102xd	3 8 8	3 6 4
Manchester 3% 1941 or after	FA	82xd	3 13 2	—
Manchester 3% 1958–63	AO	93½	3 4 2	3 8 1
Metropolitan Consolidated 2½% 1920–49	MJSD	98	2 11 0	2 15 1
Met. Water Board 3% "A" 1963–2003	AO	85½	3 10 2	3 11 8
Do. do. 3% "B" 1934–2003	MS	88	3 8 2	3 9 5
Do. do. 3% "E" 1953–73	JJ	89	3 7 5	3 11 6
Middlesex County Council 3% 1961–66	MS	93	3 4 6	3 8 4
*Middlesex County Council 4½% 1950–70	MN	105	4 5 9	3 16 8
Nottingham 3% Irredeemable	MN	82	3 13 2	—
Sheffield Corporation 3½% 1968	JJ	100	3 10 0	3 10 0
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS.				
Great Western Rly. 4% Debenture	JJ	105xd	3 16 2	—
Great Western Rly. 4½% Debenture	JJ	113½xd	3 19 4	—
Great Western Rly. 5% Debenture	JJ	121½xd	4 2 4	—
Great Western Rly. 5% Rent Charge	FA	114 xd	4 7 4	—
Great Western Rly 5% Cons. Guaranteed	MA	112	4 9 3	—
Great Western Rly. 5% Preference	MA	84	5 19 1	—

* Not available to Trustees over par.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date ; in the case of other Stocks, as at the latest date.